

10-25-2000



101496323

RECORDATION FORM COVER SHEET

TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type



New



Resubmission (Non-Recordation)

Document ID #



Correction of PTO Error

Reel #

Frame #



Corrective Document

Reel #

Frame #

Conveyance Type



Assignment



License



Security Agreement



Nunc Pro Tunc Assignment



Merger



Change of Name



Other

Effective Date
Month Day Year

09 01 2000

Conveying Party



Mark if additional names of conveying parties attached

Name

Cable Express, Inc.

Execution Date
Month Day Year

09 01 2000

Formerly



Individual



General Partnership



Limited Partnership



Corporation



Association



Other



Citizenship/State of Incorporation/Organization

Delaware

Receiving Party



Mark if additional names of receiving parties attached

Name

PNC Bank, National Association, as Agent

DBA/AKA/TA

Composed of

Address (line 1)

One PNC Plaza

Address (line 2)

249 Fifth Avenue

Address (line 3)

Pittsburgh

Pennsylvania

15222-2709

City

State/Country

Zip Code



Individual



General Partnership



Limited Partnership



If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)



Corporation



Association



Other

National Banking Association



Citizenship/State of Incorporation/Organization

United States

10/24/2000 MTHAI1 00000197 2354950

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FOR OFFICE USE ONLY

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231TRADEMARK
REEL: 002161 FRAME: 0392

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number (412) 355-6730

Name

Charles E. Harris, III

Address (line 1)

Kirkpatrick & Lockhart LLP

Address (line 2)

Henry W. Oliver Building

Address (line 3)

535 Smithfield Street

Address (line 4)

Pittsburgh, PA 15222-2312

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

☐

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

2354950

Number of Properties

Enter the total number of properties involved.

#

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

40.00

Method of Payment:

Enclosed ☒

Deposit Account ☒

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

11-1110

Authorization to charge additional fees:

Yes

☒

No

☐

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Charles E. Harris, III

Name of Person Signing

Signature

October 10, 2000

Date Signed

**COLLATERAL ASSIGNMENT OF AND RATIFICATION OF
SECURITY INTEREST IN INTELLECTUAL PROPERTY INTERESTS**

THIS COLLATERAL ASSIGNMENT OF AND RATIFICATION OF SECURITY INTEREST IN INTELLECTUAL PROPERTY INTERESTS (this "**Instrument**") is entered into as of September 1, 2000 by and between Cable Express, Inc., a Delaware corporation which is successor by merger to Cable Express, Inc., an Ohio corporation (the "**Assignor**"), and PNC BANK, NATIONAL ASSOCIATION, as Administrative Agent for the Banks (as defined in the hereinafter defined Credit Agreement) (the "**Administrative Agent**"), with an address at One PNC Plaza, 249 5th Avenue, Pittsburgh, Pennsylvania 15222-2709. All terms capitalized but not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement, unless the context otherwise requires.

WHEREAS, the Assignor, Axian Communications, Inc. (the "Borrower"), certain other Guarantors, PNC Bank, National Association, as Administrative Agent for the Banks, and the Banks have entered into that certain Credit Agreement dated May 31, 2000, as amended by a First Amendment dated as of September 1, 2000 (as the same may be amended, modified, supplemented or restated from time to time, the "**Credit Agreement**"), pursuant to which the Banks have agreed to extend to the Borrower upon the terms and subject to the conditions set forth therein, a term loan and revolving credit facility.

WHEREAS, the Assignor is the owner of all right, title and interest in, to and under the intellectual property rights as set forth on the attached Schedule A.

WHEREAS, the Administrative Agent, the Assignor and others have entered into a Security Agreement of even date herewith (as such agreement may be amended from time to time hereafter, the "**Security Agreement**"), pursuant to which the Assignor granted to the Administrative Agent a security interest in certain Collateral (as defined in the Security Agreement) of Assignor, including but not limited to Assignor's General Intangibles (as defined in the Security Agreement) which include, but are not limited to, the intellectual property set forth on Schedule A hereto, as security for the payment or performance of Assignor's Secured Obligations (as defined in the Security Agreement), and pursuant to which the Assignor therein agreed to execute and cause to be filed all such further instruments and documents as Administrative Agent may request for preserving the security interest.

WHEREAS, the Administrative Agent has requested that the Assignor execute and deliver this Instrument for the purpose of collaterally assigning its interests in, and placing in the public record of the United States Patent and Trademark Office the collateral assignment granted pursuant hereto to the Administrative Agent in, certain of the Assignor's Collateral for the benefit of the Banks.

NOW, THEREFORE, in consideration of the foregoing premises, and intending to be legally bound hereby, Assignor and Administrative Agent, on it behalf and on behalf of the Banks, hereby agree as follows:

1. Definition of Terms Used Herein. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Credit Agreement.

2. Assignment and Security Interest. As confirmation of the security interest granted by Assignor under the Security Agreement to secure the complete and timely satisfaction of all Secured Obligations, Assignor hereby ratifies the creation and grant of the security interest in, and further, to secure the complete and timely satisfaction of all Secured Obligations, Assignor does hereby hypothecate (subject to paragraph 6 hereof), as collateral security, to the Administrative Agent, as secured party, for the benefit of itself and the Banks: (i) the United States and foreign patent and patent applications owned by Assignor, all reissues, divisional, continuation, or continuation-in-part patent applications and patents related thereto, and all renewals and extensions thereof and reexamination certificates relating thereto; including, without limitation, all proceeds (such as license royalties or proceeds of infringements suits), and all rights to sue for past, present, and future infringements (collectively called the "Patents"); and (ii) all of Assignor's trademark applications, trademarks (whether registered, unregistered or for which an application to register has been filed), service mark applications, service marks (whether registered, unregistered or for which an application to register has been filed) and tradenames, together with the goodwill of the business related thereto; including without limitation all renewals thereof and all proceeds (such as license royalties or proceeds of infringement suits), and all rights to sue for past, present and future infringements (collectively called the "Marks"). All registered Patents and Marks are and shall be listed on Schedule A.

3. Right to Inspect. Assignor hereby confirms the right of the Administrative Agent and its employees and agents to visit Assignor's plants and facilities where products sold or services provided under any of the Marks are manufactured, inspected, stored, or provided, and to inspect and review the products and quality control records relating thereto at reasonable times. Assignor confirms its commitment to do any and all acts required by the Administrative Agent to ensure maintenance of quality standards for such products and services. The time and frequency of such inspections shall be consistent with those in Section 8.1.16 of the Credit Agreement.

4. Future Intellectual Property. If, before the Secured Obligations shall have been satisfied in full, Assignor shall either obtain rights to any invention or become entitled to any rights under or the benefit of any United States or foreign patent application or patent, including any reissue, divisional, continuation, or continuation-in-part patent applications or reexamination certificates related to any of the Patents or to any improvement on any of the Patents, or shall obtain rights in any United States or foreign trademark, service mark or tradename or any registrations or applications for registration thereof, the provisions of paragraph 2 (except for the Schedule which will contain only registered Patents and Marks) shall automatically apply thereto and Assignor shall give to the Administrative Agent prompt notice thereof in writing.

5. Modification by Administrative Agent. Assignor authorizes the Administrative Agent to modify this Instrument by amending Schedule A to include all federally registered Patents and Marks which hereafter fall within the scope of paragraph 2 or paragraph 4 hereof.

6. Retention of Rights. Unless and until there shall have occurred and be continuing an Event of Default, the Assignor shall retain the legal and equitable title to the Patents and the Marks and shall have the right to use the Patents and the Marks in the ordinary course of its business. Assignor agrees, except as provided in the Credit Agreement, not to sell or assign its interest in, or grant any license under the Patents or Marks without the prior written consent of the Administrative Agent; provided, however that nothing herein contained shall prohibit the Assignor from failing to continue the prosecution of, maintain, renew or otherwise abandoning any item included in the Marks or the Patents, if in the Assignor's reasonable judgment, the retention of such items is not material to the proper conduct of Assignor's business.

7. Agents Rights and Obligations As Secured Party. If any Event of Default shall have occurred and be continuing under either the Credit Agreement or the Security Agreement, the Administrative Agent shall have all those rights and remedies given it under the Security Agreement and those allowed by law.

8. Release of Interest. At such time as Assignor shall completely satisfy all of the Secured Obligations, Administrative Agent shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to release its interests in and to the Patents and Marks subject to any disposition thereof which may have been made by the Administrative Agent pursuant to the Security Agreement or hereto.

9. Cumulative Rights; Confirmation of Rights and Obligations Under Security Agreement. All of the Administrative Agent's rights and remedies with respect to the Patents and Marks, whether established hereby, the Security Agreement or by law shall be cumulative and may be exercised singularly or concurrently. The Assignor hereby ratifies and confirms all of its obligations contained in the Security Agreement and confirms in the Administrative Agent for its benefit and for the benefit of the Banks all of the rights granted to the Administrative Agent thereunder by the Assignor.

10. Binding Instrument; Assignments. This Instrument, and the terms, covenants and conditions hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Assignor shall not be permitted to assign this Instrument or any interest herein or in the Collateral, or any part thereof, or otherwise pledge, encumber or grant any option with respect to the Collateral, or any part thereof, or any cash or property held by the Administrative Agent as Collateral under this Instrument, except as contemplated by the Security Agreement or the Credit Agreement.

11. Governing Law. This Instrument shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania, exclusive of its rules on choice of law.

12. Notices. All communications and notices hereunder shall be in writing and given as provided in Section 11.6 of the Credit Agreement in the case of the Assignor or the Administrative Agent.

13. Severability. In case any one or more of the provisions contained in this Instrument should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

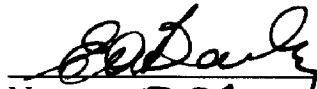
14. Section Headings. Section headings used herein are for convenience only and are not to affect the construction of, or to be taken into consideration in interpreting, this Instrument.

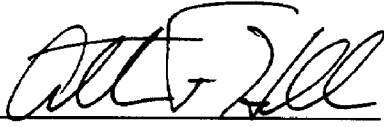
15. Counterparts. This Instrument may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument.

WITNESS, the execution hereof as of September 1, 2000.

WITNESS
ATTEST:

CABLE EXPRESS, INC.


Name: EVERTON A. BAILEY
Title: _____

By: 
Name: Arthur F. Heller
Title: Executive Vice President

PNC BANK, NATIONAL
ASSOCIATION, as Administrative Agent

By: _____
Name: _____
Title: _____

WITNESS, the execution hereof as of September 1, 2000.

WITNESS:

CABLE EXPRESS, INC.

Name: _____

By: _____

Name: Arthur F. Heller

Title: Executive Vice President

PNC BANK, NATIONAL
ASSOCIATION, as Administrative Agent

By:  _____

Name: Eric Dilly Curran

Title: V.P.

Schedule A

Registered Service Mark "Cable Express, Inc.", registered with
United States Patent and Trademark Office on June 6, 2000.
Registration Number 2,354,950.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Cable Express, Inc.

For Trademark Registration: 2354950

Box: Assignment
Commissioner of Patents and Trademarks
Washington, DC 20231

EXPRESS MAIL CERTIFICATE"Express Mail" label number EG831841634USDate of Deposit October 11, 2000

I hereby certify that the following attached paper or fee
PTO FORM-1618A
SECURITY AGREEMENT
CHECK PAYABLE TO PTO (For recordal fees)

is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Box Assignment, Commissioner of Patents and Trademarks, Washington, DC 20231.

Patricia A. Mack

(Typed or printed name of person mailing paper or fee)

Patricia A. Mack

(Signature of person mailing paper or fee)

NOTE: Each paper must have its own certificate and the "Express Mail" label number as a part thereof or attached thereto. When, as here, the certification is presented on a separate sheet, that sheet must (1) be signed and (2) fully identify and be securely attached to the paper or fee it accompanies. Identification should include the serial number and filing date of the application as well as the type of paper being filed, e.g. complete application, specification and drawings, responses to rejection or refusal, notice of appeal, etc. If the serial number of the application is not known, the identification should include at least the name of the inventor(s) and the title of the invention.

NOTE: The label number need not be placed in each page. It should, however, be placed on the first page of each separate document, such as, a new application, amendment, assignment, and transmittal letter for a fee, along with the certificate of mailing by "Express Mail." Although the label number may be on checks, such a practice is not required. In order not to deface formal drawings it is suggested that the label number be placed on the back of each formal drawing or the drawings be accompanied by a set of informal drawings on which the label number is placed.

(Express Mail Certificate [8-3])